

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MARK OPIO,)	
)	
Plaintiff)	
)	
v.)	2:21-cv-00187-NT
)	
WHOLE FOODS MARKET GROUP,)	
INC., et al.,)	
)	
Defendants)	

ORDER ON DISCOVERY ISSUE

The Court convened a telephonic conference with counsel on March 4, 2022, to discuss a discovery issue. For the reasons stated on the record, the Court finds and orders:

1. Whether Defendant Espeseth referenced employees in a derogatory way because of the employees' race, ethnicity, national origin, or immigrant status is relevant to the claims and defenses asserted in this action.
2. Using designated search terms, Defendants shall search Defendant Espeseth's work email communications from January 1, 2017, to the present, to identify any communications that might be construed to reference an employee in a derogatory way because of the employee's race, ethnicity, national origin, or immigrant status. Defendants shall produce any such documents to Plaintiff.
3. In the event Defendants are uncertain whether certain documents reference an employee in a derogatory way because of the employee's race, ethnicity, national origin, or immigrant status, Defendants may ask the Court to review the documents to determine whether the documents must be produced.

4. Plaintiff shall propose the terms that would be used to conduct the search. If the parties cannot agree as to the search terms, the Court will determine the terms to be used in the search.
5. Defendants shall inform Plaintiff whether and the extent to which Defendant Espeseth used text messages to communicate on work matters. If Plaintiff believes the information provided by Defendants suggests Defendant Espeseth's text messages should be searched and Defendants object to the search, Plaintiff may ask for a further conference with the Court to address the issue.

NOTICE

Any objections to this Order shall be filed in accordance with Federal Rule of Civil Procedure 72.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 7th day of March, 2022.